

## **Assembly Bill No. 2023**

### **CHAPTER 370**

An act to amend Sections 24003 and 24103 of the Education Code, and to amend Section 21156 of, and to add Sections 31720.3 and 53222.5 to, the Government Code, relating to public employee disability benefits.

[Approved by Governor September 27, 2008. Filed with  
Secretary of State September 27, 2008.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 2023, Houston. Public employee disability benefits.

The Public Employees' Retirement System provides for the granting of disability benefits to members in state service. Existing law generally provides that if a medical examination and other available information show to the satisfaction of the Board of Administration of the Public Employees' Retirement System that a member in state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability. The State Teachers' Retirement System permits the board of administration of the system to authorize payment of a disability allowance or disability retirement allowance, requires a member to provide medical documentation to substantiate the claim qualifying the member for the disability allowance or disability retirement allowance, and permits the board to order a medical examination in this regard, as specified. The County Employees Retirement Law of 1937 permits a member permanently incapacitated for duty to retire for disability only if specified criteria are met. Existing law permits the legislative body of a local agency to establish a pension trust, as specified, for the benefit of its officers and employees and permits that legislative body to establish reciprocal retirement benefits with other specified retirement systems.

This bill would restrict the board or body administering a retirement system or a pension trust, as described above, with respect to the medical opinion or documentation used to determine whether a member is eligible to retire for disability, as specified, and would prohibit the use of disability retirement as a substitute for the disciplinary process.

*The people of the State of California do enact as follows:*

SECTION 1. Section 24003 of the Education Code is amended to read:

24003. (a) The member shall provide medical documentation to substantiate the impairment qualifying the member for the disability allowance.

(b) On receipt of an application for disability allowance under this part, the system may order a medical examination of a member to determine whether the member is incapacitated for performance of service. The medical examination shall be conducted by a practicing physician, selected by the board, with expertise in the member's disability and the board shall pay all costs associated with the examination. The board shall pay all other reasonable costs related to travel and meals in accordance with the rates set for state employees by the Department of Personnel Administration. If the member refuses to submit to the required medical examination, the application for disability allowance shall be rejected. The member shall either remain in this state, or return to this state at the member's own expense, to undergo the initial evaluations or examinations, or the application shall be rejected, unless this requirement is waived by the board. If the member is too ill to be examined, the system shall postpone the examination until the member can be examined. The member or the member's treating physician shall inform the system, in writing, when the medical examination can be rescheduled.

(c) The system may reject the disability allowance application under this part if the member fails to provide requested medical documentation to substantiate a disability, as defined in Section 22126, within 45 days from the date of the request or within 30 days from the time that a legally designated representative is empowered to act on behalf of a member who is mentally or physically incapacitated.

(d) If the board determines that a member who has applied for a disability allowance under this part may perform service in the member's former position of employment or in a comparable level position with the assistance of reasonable accommodation, the board may require the member to request reasonable accommodation from the employer. Failure of the member to request reasonable accommodation, as directed by the board, may be grounds for cancellation of the disability allowance application.

(e) If the employer fails or refuses to provide reasonable accommodation, the board may require the member to pursue an administrative appeal of the employer's denial as a condition for receiving a disability allowance under this part.

(f) The system shall inform the member of the rejection or cancellation of the member's disability allowance application under this part within 30 days after that determination is made by the system.

(g) In determining whether a member meets the definition of disability pursuant to Section 22126, the board shall make a determination on the basis of competent medical documentation and shall not use the awarding of a disability allowance as a substitute for the disciplinary process.

SEC. 2. Section 24103 of the Education Code is amended to read:

24103. (a) The member shall provide medical documentation substantiating the impairment qualifying the member for the disability retirement under this part.

(b) On receipt of an application for disability retirement under this part, the system may order a medical examination of a member to determine

whether the member is incapacitated for performance of service. The medical examination shall be conducted by a practicing physician, selected by the board, with expertise in the member's disability, and the board shall pay all costs associated with the examination. The board shall pay all other reasonable costs related to travel and meals in accordance with the rates set for state employees by the Department of Personnel Administration. If the member refuses to submit to the required medical examination, the application for disability retirement shall be rejected. The member shall either remain in this state, or return to this state at the member's own expense, to undergo the initial evaluations or examinations or the application shall be rejected, unless this requirement is waived by the board. If the member is too ill to be examined, the system shall postpone the examination until the member can be examined. The member or the member's treating physician shall inform the system, in writing, when the medical examination can be rescheduled.

(c) The system may reject the disability retirement application under this part if the member fails to provide requested medical documentation to substantiate a disability, as defined in Section 22126, within 45 days from the date of the request or within 30 days from the time that a legally designated representative is empowered to act on behalf of a member who is mentally or physically incapacitated.

(d) If the board determines that a member who has applied for disability retirement under this part may perform service in the member's former position of employment or in a comparable level position with the assistance of reasonable accommodation, the board may require the member to request reasonable accommodation from the employer. Failure of the member to request reasonable accommodation, as directed by the board, may be grounds for cancellation of the disability retirement application under this part.

(e) If the employer fails or refuses to provide reasonable accommodation, the board may require the member to pursue an administrative appeal of the employer's denial as a condition for receiving a disability retirement allowance under this part.

(f) The system shall inform the member of the rejection or cancellation of the member's disability retirement allowance application under this part within 30 days after that determination is made by the system.

(g) In determining whether a member meets the definition of disability pursuant to Section 22126, the board shall make a determination on the basis of competent medical documentation and shall not use the awarding of a disability retirement as a substitute for the disciplinary process.

SEC. 3. Section 21156 of the Government Code is amended to read:

21156. (a) (1) If the medical examination and other available information show to the satisfaction of the board, or in case of a local safety member, other than a school safety member, the governing body of the contracting agency employing the member, that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability, unless the member is qualified

to be retired for service and applies therefor prior to the effective date of his or her retirement for disability or within 30 days after the member is notified of his or her eligibility for retirement on account of disability, in which event the board shall retire the member for service.

(2) In determining whether a member is eligible to retire for disability, the board or governing body of the contracting agency shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process.

(b) (1) The governing body of a contracting agency upon receipt of the request of the board pursuant to Section 21154 shall certify to the board its determination under this section that the member is or is not incapacitated.

(2) The local safety member may appeal the determination of the governing body. Appeal hearings shall be conducted by an administrative law judge of the Office of Administrative Hearings pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of this title.

SEC. 4. Section 31720.3 is added to the Government Code, to read:

31720.3. In determining whether a member is eligible to retire for disability, the board shall not consider medical opinion unless it is deemed competent and shall not use disability retirement as a substitute for the employer's disciplinary process.

SEC. 5. Section 53222.5 is added to the Government Code, to read:

53222.5. If a local legislative body establishes a pension trust pursuant to this article that provides for disability retirement or has established reciprocity with a retirement system that provides for disability retirement, the legislative body of the local agency, in determining whether a member is eligible to retire for disability, shall make a determination on the basis of competent medical opinion and shall not use disability retirement as a substitute for the disciplinary process.